

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2007

CORAM

THE HONOURABLE MR. JUSTICE K. RAVIRAJA PANDIAN
AND
THE HONOURABLE MRS JUSTICE CHITRA VENKTARAMAN

WRIT APPEAL NOS.2310 and 2395 OF 2001
AND

W.P.M.P.NO.18002 OF 2001

P. Dakshinamurthy ... Appellant in WA.No.2310
of 2001

C. Ramamurthy ... Appellant in WA.No.2395
of 2001

Vs.

Cuddalore Municipality
rep. by its Commissioner
Cuddalore. ... Respondent

Writ Appeals filed against the orders made in W.P.No.19192 of 2001 dated 12.10.2001 and W.P.No.19118 of 2001, dated 15.10.2001 to issue a Writ of Certiorarified Mandamus or any other appropriate writ, order or direction calling for the records of the respondent relating to the allotment of shop No.61 in the municipal bus stand Lawrence Road, Cuddalore to the petitioner and quash the orders therein in Na.Ka.10332/99-A8 dated 25.8.2000, 2.11.2000 and 13.12.2000 in so far as it relates to the petitioner fixing rent for the shop at Rs.4493/- demand for one year's rental and additional electricity deposit and further forbear the respondent from demanding or collecting more than the fair rent for the shop allotted to the petitioner, the additional advance rental for 8 months and electricity security deposit of Rs.5000/-

to issue a writ of Certiorarified Mandamus or any other appropriate writ, order or direction calling for the records of the respondent relating to the allotment of shop No.26 in the Municipal Bus Stand, Lawrence Road, Cuddalore to the petitioner and quash the order therein in Na.Ka.10002/97 A8 dated 1.2.2000 in so far as it fixes rent for the shop No.26 at Rs.6740/-p.m. and further forbear the respondent from demanding or collecting more than the fair rent for the shop allotted to the petitioner and repay to him the excess

rental advance for 8 months paid to the respondent and also the additional electricity security deposit of Rs.5000/-.

For Appellant : Mr. A. Muthukumar

For Respondent : Mr. V. Subbarayan

J U D G M E N T

(Judgment of the Court was delivered by
K. Raviraja Pandian, J.)

When the matter was taken up on 23.8.2007, there was no representation for the respondent. We heard the appellant and dictated orders in the open Court granting the relief as prayed for by pointing out that there was no opposition from the respondent. After some time, the counsel for the respondent appeared and pleaded that he would prepare and argue the case on merits and sought for time. Hence, the case is listed today. The counsel for the respondent today submitted that the orders dictated on 23.8.2007 may be recalled. The counsel for the appellants fairly accepted for the same. Hence, the orders dictated on 23.8.2007 not yet signed is recalled. The appeals are heard on merits.

2. In these writ appeals, the appellants challenge the correctness of the order of the learned single Judge dated 12.10.2001 made in W.P.No.19192 of 2001 and W.P.No.19118 of 2001, dated 15.10.2001, whereby the learned single Judge non suited the appellants herein in questioning the correctness of fixation of rent for the shops, which is under the possession of the respective appellants in a sum of Rs.4493/- and Rs.6740/- respectively but owned by the respondent.

3. Originally, the appellants were tenants under the respondent-Municipality. The appellants were evicted. The old building was demolished and new shops were constructed in that place and allotted to various persons on rent for augmenting income to the respondent-Municipality.

4. The procedure for allotting shops owned by the local bodies are governed by the terms of the G.O.Ms.No.147, dated 30.12.2000. As per the Government Order, the shops of the local bodies could be offered for lease either by public auction or by renewing the lease in favour of the existing tenants on enhancement of rent by 15% on the basis of resolution passed by the local bodies having regard to financial requirements.

5. In this case the shops are newly constructed, the

request for renewal of the lease by the appellants were not considered. Hence, the appellants moved this Court by filing writ petitions and obtained allotment of shops based on the orders of this Court. While allotting the shops, new rate of rent was fixed by the respondent. Aggrieved by the fixation of new rate of rent, the appellants filed writ petitions.

6. It is the case of the appellants/petitioners that the fixation of rent by the respondent is not based on any scientific evaluation or based on any statutory provision but fixed arbitrarily. When the writ petitions were taken up before the learned single Judge, a suggestion appears to have been made to the petitioners to participate in open auction for the said shops, which has not been opted for by the petitioners. The learned single Judge after taking note of the argument advanced and the materials placed, has come to the conclusion that the fixation of rent, which was complained of by the petitioners could not be considered as increase as the shops themselves were newly constructed one and the said shops were allotted to the petitioners as per the directions of this Court. Taking into consideration of the location, proximity to important and busy places and other necessary factors, the Municipality has fixed the rents, which could not be legally complained of by the appellants. Having recorded such a finding, the learned single Judge non suited the petitioners for the relief as sought for and dismissed the writ petitions.

7. The correctness of the said order is now canvassed before us by filing the writ appeals. The learned counsel appearing for the appellants submitted that certain shops have been allotted to certain persons with the lower rate of rent. However, the appellants/petitioners were asked to pay the higher rate of rent. The rent has not been fixed with reference to any guidelines but fixed whimsically by the respondent authority. That is the main ground that has been argued before this Court.

8. However, the learned counsel appearing for the Municipality has placed a calculation memo before this Court, whereby the rent has been fixed at the rate of Rs.34.23 per sq.ft. The calculation memo reads as follows:-

CUDDALORE MUNICIPALITY

RENT CALCULATION FOR SHOP NOS.23 TO 64 AT BUS STAND

I.	1. Loan Amount	: Rs.90.00 Lakhs
	2. Interest	: 11.75
	3. Total Area	: 6924.79 sq.ft
II.	1. Net Building Value	: Rs.79,45,101
III	1. Land Area	: 10458.07 sq.ft
	2. Land Value (Rs.347.50/sq.ft.)	: Rs.36,34,179/-
	3. Total Value	: Rs.1,15,79,280/-

Rental Value:

1. 12% of Capital Value	: Rs.13,89,573.00
2. Interest for loan amount (11.75%)	: Rs.10,57,500.00
3. Maintenance charge 5%	: Rs. 3,97,255.00
Total Annual Rent	: Rs.28,44,263.00
Total Monthly Rent	: Rs. 2,37,022.00

	(or)Rs. 34.23/sq.ft

Shop No.23 to 29 = $6.00 \times 4.00 = 18.30 \text{ sq.m} = 196.90 \text{ sq.ft} = \text{Rs. } 6740/-$

Restaurant No.30 = $18.25 \times 8.20 = 149.65 \text{ sq.m} = 1610.23 \text{ sq.ft} = \text{Rs. } 55118/-$

Shop No.31 to 35B = $3.05 \times 4.00 = 12.20 \text{ sq.m} = 131.27 \text{ sq.ft} = \text{Rs. } 4493/-$

Shop No.36 = $2.82 \times 4.00 = 11.28 \text{ sq.m} = 121.37 \text{ sq.ft} = \text{Rs. } 4154/-$

Shop No.37 to 42 = $3.05 \times 4.00 = 12.20 \text{ sq.m} = 131.27 \text{ sq.ft} = \text{Rs. } 4493/-$

Shop No.42 to 47B = $3.05 \times 4.00 = 12.20 \text{ sq.m} = 131.27 \text{ sq.ft} = \text{Rs. } 4493/-$

Shop No.48 = 2.82x4.00 = 11.28sq.m = 121.37sq.ft =
Rs. 4154/-

Shop No.49 to 53 = 3.05x4.00 = 12.20sq.m = 131.27sq.ft = Rs.
4493/-

Shop No.54 to 56 = 3.05x4.00 = 12.20sq.m = 131.27sq.ft = Rs.
4493/-

Shop No.57 = 2.82/4.00 = 11.28sq.m = 121.37sq.ft
= Rs.4154/-

Shop No.58 to 64 = 3.05x4.00 = 12.20sq.m = 131.27sq.ft =Rs.
4493/-

9. Admittedly, one of the petitioners who is in occupation of the shop bearing No.26, which is larger in extent, in the sense, the area is 196.90 sq.ft for which the rent has been fixed at Rs.6740/- per month. In respect of the other petitioner, the rent is fixed at Rs.4493/- per month on the basis of the extent of the shop, which is 131.27 sq.ft. On a perusal of the working sheet, we are of the view that the rent has been fixed uniformly based on expenditure incurred datas, which cannot be regarded as whimsical or arbitrary. In a similar set of facts in respect of shops owned by Shri Marundeeswarar Temple, Thiruvannamiyur came up for consideration before a Division Bench of this Court in a case of *R.Ragunathan vs. Executive Officer, Sri.Marundeeswarar Temple and Two Others reported in 2005(2)L.W. 761*, wherein this Court held that if the landlord was demanding exorbitant rent, which the tenant was unwilling or unable to pay, then unless the tenant has protection of Rent Control Act or some other statute, the tenant would have to vacate the property because that property did not belong to him. Such matters are purely contractual unless some statutory protection is provided for. In the absence of any statutory protection, if the tenant is not willing to pay rent demanded by the landlord, he had to vacate. The matter is purely in the realm of contract and in any event the writ petition is not the proper remedy.

10. A contention was raised by the appellants that the respondent fixed lower rate of rent for certain shops, which are also in the same building by annexing certain rent receipts. The wild and bald allegations cannot be considered by this Court when the appellants have not arrayed those persons as parties before this Court. However, it is observed that the respondent-Municipality has to fix and collect the rent as per the sq.ft rate arrived at in the working sheet and as per the G.O.Ms.No.147, dated 30.12.2000.

11. It is contended by the learned counsel appearing for the Municipality that as per G.O.Ms.No.147, Municipal Administration, dated 30.12.2000, the appellants cannot have any right to demand the shops, which has been newly constructed. However, an order has been passed by this Court in the writ petition filed by the petitioners on 8.9.1998 to allot the shops and in view of the order, the shop has been allotted by fixing the rent as aforesaid to the appellants. Though the shops have been allotted as per the direction of this Court and taken possession by the appellants on 16.12.2000, till date the appellants/petitioners have not paid any single pie towards rent and the arrears of rent has been accumulated to several thousands of rupees that may be directed to be paid by the appellants/petitioners.

12. Having regard to the totality of the circumstances of the case, we are of the view that the rent fixed by the respondent-Municipality in respect of the shops is based on the scientific calculation and based on the cost of construction and in the realm of contract. Therefore we are not inclined to interfere with the fixation of rent. Likewise, it is well open to the respondent to recover the arrears of rent from the appellants and also the current rent in accordance with law. This order would not preclude the appellants to approach the respondent for payment of arrears in easy instalments and it is for the respondent to consider the same.

13. With this observation, the writ appeals are disposed of. Consequently, connected miscellaneous petition is closed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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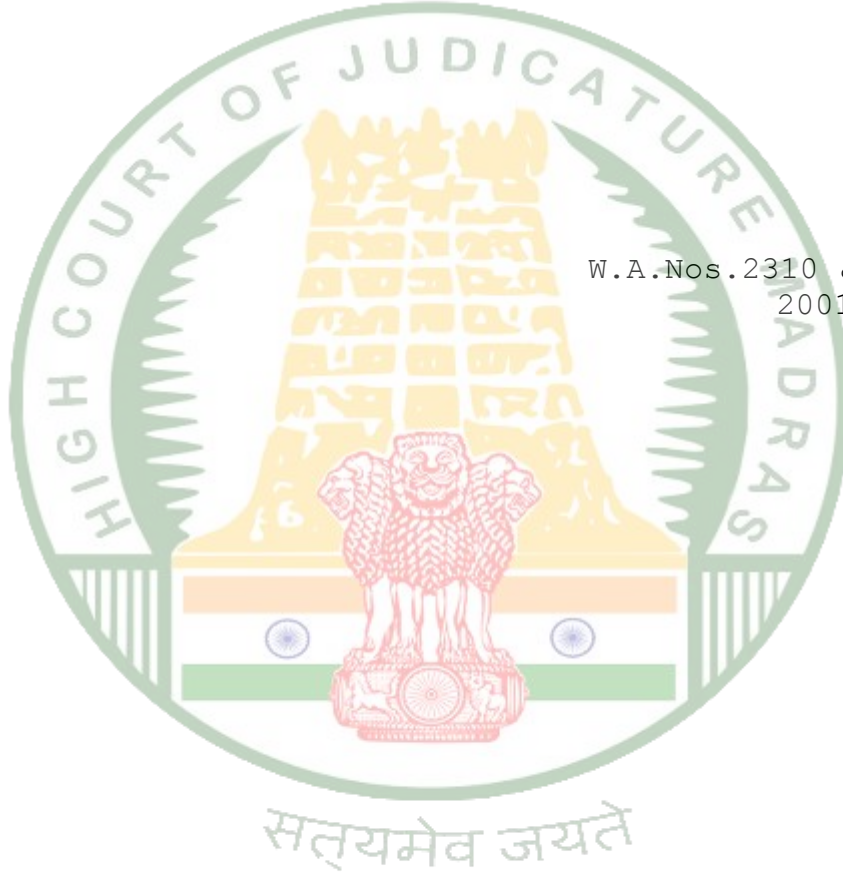
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To

Cuddalore Municipality
rep. by its Commissioner
Cuddalore.

+1cc to Mr.A.Muthukumar, Advocate Sr 55836

SSV (CO)
km/24.9.



W.A.Nos.2310 & 2395 of
2001

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